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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1136

MURRAY TILLMAN, ET AL.,

Petitioners,

v.

WHEATON-HAVEN RECREATION ASSOCIATION, INC., ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF RESPONDENTS

The Respondents, with the exception of Richard E. McIntyre, separately represented by counsel, respectfully pray that the judgment of the United States Court of Appeals for the Fourth Circuit be affirmed.

QUESTION PRESENTED

Are 42 U.S.C. Secs. 1981, 1982 and 2000a applicable to the Wheaton-Haven Recreation Association, Inc., a distinctly private club, whose memberships are not tied to home ownership?

STATEMENT OF THE CASE

This proceeding, as it now appears before this Honorable Court, is but a distant cousin of the suit as filed in the District Court of Maryland, on October 13, 1969. The original complaint laid heavy stress on the alleged involvement of Montgomery County, Maryland, in the Wheaton-Haven operation, under 42 U.S.C. Sec. 1983, and the claimed public character, of the pool corporation, under 42 U.S.C. Sec. 2000a. The roar raised under 1983 was reduced to a whimper, by the time the case was argued, in the District Court, on June 24, 1970, since *Adickes v. Kress*, 398 U.S. 144, defining state action, clearly emasculated the Petitioners' position under this Statute. The recent decision in *Moose Lodge No. 107 v. Irvis, et al.*, 32 L. Ed. 2d 627, decided June 12, 1972, completely silenced this whimper and appears to have resulted in abandonment of the state action concept. The thrust, under 2000a, was reduced to a parry, by the Court of Appeals, and does not appear to be seriously argued. At the Appellate stage, the Petitioners almost completely shifted their emphasis to Sections 1981 and 1982. This shift was occasioned by the decision in *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229, decided December 15, 1969, following the filing of this action. The Petitioners, although still vaguely alluding to interstate commerce, and public vis a vis private, now seem to substantially rely on the contention that Wheaton-Haven and Little Hunting Park are indistinguishable. The undisputed facts, and the well reasoned Opinion of the Fourth Circuit Court of Appeals, which held this case sub curia for over one year, belie such a conclusion.

SUMMARY OF ARGUMENT

Wheaton-Haven Recreation Association, Inc. is a distinctly private organization falling within the statutory exemption of 42 U.S.C. Sec. 2000a(e). Although it may presently draw members from anywhere in the United States, and although it is situated in an area populated by several million persons within a radius of twenty miles, its membership is in the range of two hundred sixty out of an authorized maximum of three hundred twenty-five. It is not operated for profit, and meets its expenses from initiation fees, and annual dues, calculated on yearly cost of operation. It has a high degree of membership control, in that members elect the Board of Directors, may vote in new members, may amend the By-laws, and propose new business. It limits its facilities to members and relatives of members, engages in no publicity, and erected its own facilities, on its own land, with its own funds, and without public contributions or assistance.

The Civil Rights Act of 1866 (42 U.S.C. Secs. 1981, 1982), does not apply to Wheaton-Haven, since home ownership is not tied to pool membership. Members do not have the right to assign or sell a membership, nor is there any situation in which a contractual arrangement could arise between any member, and a person desirous of purchasing that membership. All new members must be approved by the Board of Directors, or the membership, as the case may be, and, as the situation presently exists, Wheaton-Haven may or may not repurchase the membership of a resigning member, at a discounted rate, as it sees fit.

The alleged tax exemptions granted to Wheaton-Haven are manifestly no different than those granted to any other non-profit, private organization, and the Petitioners do not

seem to argue that such exemption is sufficient to constitute state action.

In summation, this case has resolved itself down to the single and sole issue as to whether or not there are sufficient factual differences to distinguish Wheaton-Haven from the corporation in *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229.

ARGUMENT

THE CIVIL RIGHTS ACTS OF 1866 (42 U.S.C. SECS. 1981 AND 1982) AND OF 1964 (42 U.S.C. SEC. 2000a) DO NOT APPLY TO WHEATON-HAVEN.

The Respondents represent unto this Honorable Court that the organization, structure, and operation of Wheaton-Haven, in light of the facts which gave rise to this case, patently distinguish this appeal from *Sullivan v. Little Hunting Park, Inc., supra.*

At the outset the Respondents take issue with the allegation in Petitioners' Brief (p. 5) that "If a member who was also a home owner sells his property and resigns his membership, his purchaser receives a first option to purchase his membership, subject to the approval of the Board of Directors". The structure of Wheaton-Haven allows of no situation where a contractual agreement could arise between a house selling member and a prospective purchaser of the home, allowing the seller to assign his membership.

The applicable provision of the Wheaton-Haven By-laws (Art. VI, A. 47), to use the language of the Fourth Circuit Court of Appeals, "Is a thing utterly without use or value and, as such, is a functional nullity. It is far too tenuous a thread to support a conclusion that there is a transfer of membership incident to the purchase of property" (Pet.

App. B-13). The structure of the Little Hunting Park pool corporation tied home ownership to pool membership, allowed persons who owned more than one home to purchase more than one membership, and gave such persons the right to assign memberships along with disposition of property. The relevant provisions of the Little Hunting Park By-laws bear no resemblance to those of Wheaton-Haven (A. 66):

> "*Section 5.* Memberships may be transferred, or assigned, for temporary use, as follows:
>
> a. Permanent transfer to another eligible person may be effected.
>
> b. The use of the membership may be temporarily assigned to eligible persons for periods not to exceed one year. Re-assignment to such eligible persons is permissible.
>
> c. Transfers and assignments of memberships must be by written instrument in such form as prescribed by the Board of Directors and are subject to approval by the Board."

As noted by the Fourth Circuit Court of Appeals (B. 13):

> "It is difficult to understand how the argument on this point would benefit the Plaintiffs in any event. The person from whom Dr. Press purchased his home was not a member of Wheaton-Haven, and Dr. Press acquired nothing connected with Wheaton-Haven by his purchase. Were the situation presented where a Negro had purchased a home from a resigning member and been refused consideration for membership we might have a different case. Here there is no transaction of which Dr. Press could have acquired a specific right which, were he white, would have carried with it some embryonic interest in Wheaton-Haven".

The relevant provisions of the Wheaton-Haven By-laws require a selling member to forward a written resignation to the Association, which must purchase the membership

back at Ninety Percent (90%) of the initiation fee, IF THE ASSOCIATION HAS A WAITING LIST. If there is no waiting list, which has been the situation with Wheaton-Haven, except for a very brief period, the Board of Directors, may AT ITS OPTION, repurchase the membership for Eighty Percent (80%) of the initiation fee. If the corporation, in its sole discretion, elects to purchase the membership, the purchaser of the home, who makes a formal written application for membership, within a reasonable period, shall have the first option to purchase the membership of the seller, subject to the approval of the Board of Directors. If such repurchase and resale are accomplished, the new member pays the same initiation fee as any person applying through the normal channels, and does not benefit from the discounted price paid the former member. When the membership is not full, this "option" is in reality a word without meaning, since there is no geographic area in which prospective members must reside (Art. V, Sec. 3 By-laws, A. 46), and home ownership is not a condition of pool membership (Art. III, Sec. 1, By-laws, A. 43). When the pool membership is filled, this "option" does nothing more than advance the prospective member on the waiting list, but, in all events, the Board of Directors, or a majority of members, at a regular or special meeting, must approve the applicant. The first option of the home purchaser is not created until there has been a repurchase by Wheaton-Haven. Although the Petitioners attempt to create a right to membership out of this pure expectancy, this provision of the Wheaton-Haven By-laws played no part in the development of this case, since Press makes no contention that he was denied the right to purchase the membership of a former member. He simply asks the Court to rule that he is entitled to purchase a membership and elevate him to a status above all members of other minority groups.

Since the acquisition of membership in Wheaton-Haven is in no way an incident of a protected sale or lease of property, Petitioners' arguments under *Jones v. Mayer*, 392 U.S. 409, *Sullivan v. Little Hunting Park, supra*, and indeed Sec. 1982 must fail. Since admission to membership in Wheaton-Haven is not incident to any contract other than the membership agreement itself, if it is not incident to a contract for the sale or lease of property, Petitioners' arguments under Sec. 1981 are likewise untenable (Court of Appeals Opinion, B. 10).

The contention that 42 U.S.C. 2000a applies is a specious argument in that it was barely argued before the District Court, and literally unmentioned in the Court of Appeals.

The Respondents have provided this Honorable Court with the transcript of proceedings in the District Court, of June 24, 1970, at which time stipulations were made, and the issues defined. The Petitioners have consistently refused to include this transcript in the record, blatantly ignoring the Federal Rules of Appellate Procedure, even to the point when the Respondents designated this transcript to be included in the single appendix. This designation having been met with the response that the transcript was not available, reference is hereby made to stipulations of counsel for the Petitioners, from the transcript provided, by Respondents:

> "But, of course, the question of whether it's a private club, we will also concede for this — for any purposes, would — is also relevant both to Sec. 2000 as well as Secs. 1981 and 1982, we don't think it is a private club, but if it is a private club, then neither 1981, 1982, or 2000 would apply" (T. 18).
>
> "We're not pressing 1983. We've cited the state action concept in 2000 only as a secondary or alternative argument" (T. 23).

"Now going on then to Sec. 2000 or the Civil Rights Act of 1964, actually, the only issue is whether there is a link between the Association and interstate commerce" (T. 61).

"Although we had not shown it yet in the evidence, it is undoubtedly true also that this pool must use certain ingredients, chemicals, and other maintenance supplies which would still — which would also originate out of the state, but for purposes of the argument today, we don't have that information available, so we're relying on the pumps and equipment, and other components, which went into the establishment and building of the pool" (T. 62).

Although the Respondents do not concede that the Wheaton-Haven pool is "a place of exhibition or entertainment", as contemplated by Sec. 2000(a)(b), and argued by Petitioners (p. 27), the additional requirement of Sec. 2000(a)(c) that it customarily presents films, performances, and athletic teams, exhibitions, or other sources of entertainment, which move in commerce, bars recovery under this Statute. *Daniel v. Paul*, 395 U.S. 298, relied upon by Petitioners in their attempt to bring Wheaton-Haven within the interstate commerce provision of Sec. 2000a(c), involved an obvious sham, as do so many of the cases under 2000a. The owners therein adopted a system of membership fees and cards after the enactment of the Civil Rights Act of 1964, with Negroes being uniformly denied membership cards and admission. A snack bar was operated wherein the owners offered to serve out of state persons by advertising their facilities, on radio and in newspapers, and served approximately 100,000 patrons per year. In addition, a jukebox was used which regularly played records manufactured outside the state. Nothing in the Wheaton-Haven record indicates that there are customary sources of entertainment which move in commerce.

In addition the private club exemption of Sec. 2000a(c) applies.

From the very beginning of its corporate existence, the facts admit of no conclusion other than that Wheaton-Haven was formed as a legitimate private club, and was not organized as a sham, to avoid the operation of any Statute. The record reveals that, in 1958, a group of private citizens purchased a parcel of land, with their own funds, and formed a non-profit corporation. Members pay an initiation fee, when they are voted in as members, and are assessed an annual amount to cover the cost of pool operation, depending on the cost in that year. The original incorporators were motivated by a common associational interest in building a swimming pool for their own use.

> "The purpose of the Association shall be to own, construct, develop, operate, maintain and manage suitable facilities for the safe and healthful recreation of the Association's members, said facilities to include a swimming pool, and such other facilities as the Association may deem desirable" (By-laws, Art. II, A. 42).

Membership is not limited to home owners (Art. III, A. 43), and, for all practical purposes, is not limited to any specific geographical area. At any regular meeting, a majority of the members, by an affirmative vote, may elect a person to membership, or, such membership may be obtained through the Board of Directors (Art. III, A. 43). Ten Percent (10%) of the members constitute a quorum (Art. IX, A. 48), so that as few as thirty-three (33) members may vote on new members, in a given situation.

The capacity of the pool is limited to three hundred twenty-five (325) family units and relatives of members (Art. III, Sec. 7, A. 46). The corporation is controlled by its members, in that an annual meeting is required, with at

least twenty (20) days notice to each member. The members may nominate Directors from the floor, and may bring business before the meeting, provided sufficient advance notice is given to the Board. Special meetings may be called, upon request of Twenty Percent (20%) of the members (Art. IX, A. 48). Amendment of the By-laws (Art. XV, A. 58), may be accomplished by the members, or the Board of Directors, subject to the final approval of the members. It is completely undisputed that Wheaton-Haven is a non-profit organization, and operated solely for the benefit of its members. It engages in no publicity whatsoever, and only maintains a sign, on its own premises, as a convenience to its members, giving the number where information may be obtained.

The Respondents therefore submit that they have the Constitutional right to fashion their private lives by joining such clubs and groups as they choose, to select their social intimates and business partners, solely on the basis of personal prejudices, including race, with the Constitutional protection against the imposition of social equality, having been consistently recognized by this Honorable Court. *Evans v. Newton*, 382 U.S. 296; *Bell v. Maryland*, 378 U.S. 226. This doctrine was reaffirmed by the dissent in the Moose Lodge No. 107 case:

> "The associational rights which our system honors permits all white, all black, all brown, and all yellow clubs to be formed. They also permit all Catholic, all Jewish, all agnostic clubs to be established. Government may not tell a man or woman who his or her associates must be. The individual can be as selective as he desires. So the fact that the Moose Lodge allows only caucasians to join or come as guests is Constitutionally irrelevant, as is the decision of the Black Muslims to admit to their services only members of their race."

Indeed, counsel for the Petitioners, in his argument, does not have the support of members of his own faction, as reported in the *Washington Post* of June 14, 1972:

> "The top lawyer in Washington's American Civil Liberties Union Chapter, Ralph Temple, said yesterday that he approves of Monday's Supreme Court ruling that a genuinely private social club may practice racial discrimination although it has accepted a state liquor license. He said there are sharp differences on the issue among civil libertarians. The right of a private group not to be punished because they enjoy their right of private associations must be upheld, Temple, the local Chapter's counsel said in a telephone interview. . . . Temple said he thinks that if an organization that is a truly private group and not just a front is prevented from discriminating, this same legal weapon could be used against truly private black groups as well, preventing them from discriminating against whites. There is a fine line between that which is public and that which is truly, truly, private, said Temple. . . . Allison Brown, a private local attorney, who is handling the Wheaton-Haven case for the A.C.L.U., said that A.C.L.U. is depending on a 1969 Supreme Court ruling that the club in question was not truly private and, therefore, could not discriminate because it had no criteria of exclusiveness other than race. Brown added that he disagrees sharply with Temple's approval of Monday's Supreme Court decision, believing instead that the Court should have denied the Moose Lodge's Liquor license if it discriminates."

The Petitioners attempt to lay great emphasis on the fact that the formal records of Wheaton-Haven show only one rejection of a white applicant since the formation of the corporation, and conclude therefore that it lacks exclusiveness. This contention ignores the colloquy between the District Court and counsel for both parties, contained

throughout the District Court transcript, unchallenged by the Petitioners, and alluding to the subtle means by which private clubs admit members. The formal rejection rate is not a true mirror of the admissions policies of a private club, as was stated in the Opinion of the Court of Appeals (B. 21):

> "This low rejection rate is in connection with formal applications only. At oral argument we were told by counsel for the Defendants that there have been numerous occasions in the past when a white prospective member would be rejected after informal interview and not given an application for membership. This would not show in the club's records as a rejection, but it would have the same effect. This information is not in the record, but *the Plaintiffs have not suggested that it is not an inaccurate representation.* It is typical of the manner in which private clubs often screen prospective members. Very often the actual application for membership is strictly a formality, for the club's decision will have already been made. Dr. Press, of course, was rejected in exactly this manner. Because he was never allowed to make a formal application for membership, he would not appear on Wheaton-Haven's books as having been rejected, despite the fact that we know he was."

Montgomery County, Maryland, now enters the fray and makes representations of fact found no where in the record. It alludes to favored tax statute, as it did in the Court of Appeals (p. 16). Challenged by the Court to produce some evidence that Wheaton-Haven enjoys a tax advantage not enjoyed by all private clubs, the County later filed a Memorandum contained in the record, indicating that "We have been unable to discover the cases of administrative opinions requested by the Court which either support or reject the position stated herein." Its contention was specifically rejected by the Court of Appeals (B. 19):

"This contention finds no support in Maryland law. Wheaton-Haven's exemption from state income taxes is derived from Md. Code, Art. 81, Sec. 288(d)(8), specifically exempting community swimming pools. In the same section, Sec. 288(d)(5), religious, educational, charitable, social, fraternal and other similar corporations, a category which, so far as we can determine, includes almost every kind of private club, are granted the identical tax exemption."

Nothing in the record indicates that Wheaton-Haven even represented that it intended to serve the community as a whole, nor do the stipulated facts reveal that this small group of private citizens ever had such motivation. The fact that Wheaton-Haven is labeled as a "community pool" by the zoning ordinance adds no stature to the County's argument. In order to construct a swimming pool, anywhere in Montgomery County, Maryland, other than a pool in the backyard of a residence, a special exception must be obtained from the Montgomery County Board of Appeals. The applicant must prove, pursuant to Section 111-37 of the Montgomery County Code, by a preponderance of the evidence, that such use will not affect adversely the present character or future development of the surrounding residential community, that certain specific setbacks are met, that a public water supply shall be available or that use of a private water supply will not affect adversely the water supply of the community, that certain screening requirements are met, that one parking space is provided for every seven persons lawfully permitted in the pool at one time (Sec. 111-27), and that special conditions may be added for the general welfare of the community, such as additional parking, additional fencing or screening, additional setbacks, location and arrangement of lighting, and a showing of financial responsibility. Once the re-

quirements are met, a property owner has a prima facie right to enjoy a special exception. If there is no probative evidence of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception is arbitrary, capricious, and illegal. *Rockville Fuel and Feed v. Board of Appeals*, 257 Md. 183. Wheaton-Haven met its burden, at a public hearing, and its special exception was granted on September 23, 1958, without qualification, and is presumed to be valid and correct. *Rockville Fuel and Feed v. Board of Appeals, supra.* Although the Petitioners attempt to classify the required zoning as a continuing privilege afforded by Montgomery County, Maryland, which it doles out on a permissive basis, the obvious purpose of the special exception is to protect the community, as a whole, from the adverse effects which at times result from outdoor swimming pools. An examination of the Montgomery County Code (Sec. 111-37) indicates that special exceptions must be obtained for a wide variety of uses ranging from abattoirs, airports, private rescue squads, animal hospitals, gas stations, boarding houses and cemeteries, to milk plants, funeral parlors, hospitals, nursing homes, rifle ranges, gravel pits, incinerators, and sawmills. Among other things, the applicant for such special exception must show that the proposed use will not affect adversely the health and safety of residents or workers in the area and will not be detrimental to the use or development of adjacent properties or the general neighborhood (Sec. 111-35(a)(2) Code). It is therefore clear that the special exception device is but another regulatory tool of zoning, rather than a cooperative venture between Montgomery County and a handfull of its citizens to provide a public facility at private expense. No representation was ever made by Wheaton-Haven, nor does the record in any way imply that the pool was constructed

to serve the general public. To the contrary, the very definition of community pool, as set forth in Section 111-2 of the Montgomery County Code compels privacy:

> *"Swimming Pool, Community.* A swimming pool or wading pool, including buildings necessary or incidental thereto, operated by members of more than ten families for the benefit of such group and not open to the general public, whether incorporated or unincorporated, whether organized as a club or cooperative or association; provided that it is not organized for profit and that the right to use such pool is restricted to such families and their guests."

The definition of community swimming pools is entirely compatible with the definition of private club, also set forth in Section 111-2, Montgomery County Code:

> *"Private Club.* An incorporated or unincorporated association for civic, social, cultural, religious, literary, political, recreational, or like activities, operated for the benefit of its members and not open to the general public."

The two uses are basically the same, as to organization, operation, member control, and lack of profit motive, but differ in that community swimming pools must meet stringent requirements, not required of private clubs, for the protection of the general neighborhood. A private club thus may not construct a pool without a separate special exception, under the zoning ordinance.

The other relevant definitions, as to pools, set forth in Section 111-2 are as follows:

> *"Swimming Pool, Commercial.* A swimming pool or wading pool, including buildings necessary or incidental thereto, open to the general public and operated for profit."

> *"Swimming Pool, Private.* A swimming pool owned by members of not more than ten families and used by no other than members of such families and their guests."

The fact that the Wheaton-Haven pool happens to have been constructed in a residential area does not alter the distinctly private character of its operation. If Wheaton-Haven were to have purchased a five hundred acre tract of land, in the sparsely populated upper county, it would still have been required to obtain a community swimming pool special exception from the Montgomery County Board of Appeals. If there are more than ten members in the club, a swimming pool is categorized, by the zoning ordinance as either commercial or community. The Respondents suggest that, with the affluence of Montgomery County, and with its prolific spending policies, public swimming facilities are the function of government. Should such facilities be deemed a public necessity, as Montgomery County would have the Court believe, the County has the burden to meet such demand. The contention that the Respondent corporation exists at the pleasure of the County and only to serve the public need is an argument bearing overtones of a collectivistic nature which fails to grasp the principles of privacy recently reaffirmed in *Moose Lodge v. Irvis, et al., supra.* Should this position be upheld, no group of more than ten members could, by any means, form a distinctly private club for the operation of a swimming pool, in Montgomery County. The argument presupposes that all pool clubs, with over ten members, are public.

Even more illusory are the references made by various hearings before an administrative body, known as the Montgomery County Commission on Human Relations.

Ignored is the Opinion of the Honorable Irving A. Levine, Judge of the Circuit Court for Montgomery County, Maryland, dated September 12, 1969, holding Ordinance 4-120, which created the said Commission, and established its authority, as void and unenforceable (A. 62). It should be noted that, at the time of the hearing before this rump body, on April 24, 1969, certain of the Respondents appeared, through counsel, challenged the jurisdiction of the Commission, and requested that the proceedings be suspended pending the outcome of the litigation which resulted in the Opinion of Judge Levine, *supra*. Rejecting this legitimate request, an *ex parte* hearing was held, resulting in false findings of fact which conflict with those subjected to judicial scrutiny. It is notable that, although these proceedings are apparently the gravaman of the County's position, it makes no reference to the demise of the Ordinance, nor does it attempt to legitimize the proceedings. It seems that the County would have this Honorable Court rule Wheaton-Haven to be a public accommodation under 42 U.S.C. Sec. 2000a and thus elevate the findings of fact before this lay body to a status preferred over the facts stipulated by counsel, and adopted in both lower Courts. Its position therefore directly clashes with that of the Petitioners, by reason of counsel's statement in the District Court that the only issue under 2000a is whether there is a link between the Association and interstate commerce (*supra*).

Lastly, the position of Montgomery County, in this case, becomes even more factitious in view of the Rosner claim. She simply complains that her birthright compels her admission to the pool as a guest, when the uniformly applied By-laws limit guests to relatives of members. Although white persons living near the pool cannot be guests unless

related to members, Rosner, who lives several miles away, is to be afforded exemption from this requirement because of her color. In the final analysis, although the Petitioners attempt to raise the guest issue, there is no practical difference between the Rosner and Press claims. When queried by the District Court, as to her situation, counsel replied (T. 88):

> "Well, she would be, the same as the Presses today, I would assume. They're accepting memberships from people outside the three-quarter mile area and if she and her husband should apply, I assume, it would be the same as the Presses."
>
> "(The Court) Does anybody have a contract right other than a Negro under 1981-1982?"
>
> "(Mr. Brown) No, except such rights as a white person, that might flow to a white person."

Should this Honorable Court rule in favor of Press, under the Civil Rights Act of 1966, it would, of necessity, rule that Press, Rosner, and every other Negro in the United States would be entitled to membership, in Wheaton-Haven, until the maximum of three hundred twenty-five had been reached, placing them in a status preferred over white persons who, the Respondents concede, may be denied admission for any reason, however frivolous.

CONCLUSION

Of necessity, the Respondents heavily rely on the Opinion of the Court of Appeals. It would be presumptuous for them to assume that they could improve upon the Appellate Opinion, delivered by the Court following more than one year of evaluation. Interestingly, the Petitioners do not attempt to contradict the relevant factual elements of this Opinion, and the well-reasoned application of the law. No attempt is made to rationalize the significant disparity be-

tween the facts in Sullivan and those in Wheaton-Haven, as they bear on the issues. The Respondents can only conclude by posing the same question to this Honorable Court as was posed before the District Court, before the Appellate Court, and which the Petitioners do not answer: "If Wheaton-Haven is not a truly private club, exempt from the various civil rights statutes, what then could have been done or should have been done to so qualify this organization." The Respondents pray that the judgment of the Fourth Circuit Court of Appeals be affirmed.

Respectfully submitted,

HENRY J. NOYES,

Attorney for Respondents.